



An
Bord
Pleanála

Inspector's Report ABP-311463-21

Question

Is the concrete plinth constructed to the rear of the dwelling (see picture A) and its use, is the subject of development complaint TUD-19-38, with reference to caravan (A) in that complaint, that includes the installation of mains electricity, mains water, sewage connections (see picture B) that has increased in floor area from previous structures that were positioned at rear of dwelling (see picture C) from rear boundary wall to rear wall of dwelling (see picture D) development and if so is it exempted development?

Location

Monvey, Northfields, Clonmel, Co. Tipperary.

Declaration

Planning Authority

Tipperary County Council

Planning Authority Reg. Ref.

S5/21/86

Applicant for Declaration

Michael O'Donnell Jnr.

Planning Authority Decision

Is development and is not exempted development

Referral

Referred by

Michael O'Donnell Jnr.

Owner/ Occupier

Tipperary County Council/
Michael & Statia Reilly

Observer(s)

None

Date of Site Inspection

9th November 2022

Inspector

Hugh D. Morrison

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1.0 Site Location and Description

- 1.1. The site is located in the northern outskirts of Clonmel in a position to the north-east of the Fethard Road Roundabout, which serves the Clonmel Inner Relief Road (N24) known as the Frank Drohan Road and the Fethard Road (R689). This site lies on the western side of a short cul-de-sac off the Frank Drohan Road, which continues northwards by means of a footpath to Hillside Crescent and the Church of the Resurrection. It is surrounded by a field that adjoins the Roundabout.
- 1.2. The site itself is of rectangular shape and it accommodates a bungalow, which is sited centrally in its southern portion, and which faces east/west. This site is accessed via gates off the short cul-de-sac to the east. A shed is sited in the north-eastern corner of the site. The bungalow and shed are served by a drive-in/parking area, which extends between these two buildings and to the rear of the bungalow. There is also a front garden. The northern, southern, and western boundaries of the site are denoted by means of high blockwork walls. The remaining eastern boundary is denoted by means of a low-level wall.

2.0 The Question

- 2.1. As originally stated by the applicant, the question asks:

Is the concrete plinth constructed to the rear of the dwelling (see picture A) and its use, is the subject of development complaint TUD-19-38, with reference to caravan (A) in that complaint, that includes the installation of mains electricity, mains water, sewage connections (see picture B) that has increased in floor area from previous structures that were positioned at rear of dwelling (see picture C) from rear boundary wall to rear wall of dwelling (see picture D) development and if so is it exempted development?

- 2.2. As restated by the Planning Authority, the question asks:

Concrete plinth constructed to the rear of the dwelling, and associated development, i.e., installation of mains electricity, water, sewage connections, and its use as per that identified in the complaint submitted under TUD-19-038 at Monvey, Northfields, Clonmel, Co. Tipperary.

3.0 Planning Authority Declaration

3.1. Declaration

The Planning Authority declared that “the placement of a caravan or caravans on the site and use of same for human habitation is development and is not exempted development.”

3.2. Planning Authority Reports

3.2.1. Planning Reports

The case planner simplifies the applicant’s question, as set out above. He states that Tipperary County Council owns the site, and he refers to the subject concrete plinth as being one of several works that the landowner undertook at the site. (These works are listed below in the Planning Authority’s response to the referrer’s case). He also refers to two caravans that were on the site at the time of his site visit/the writing of his report. These caravans appeared to be in use as residences and so the exemption, under Class 8 of Schedule 2 of Part 1 to Article 6 of the Planning and Development Regulations, 2001 (as amended), afforded to the storage of a single touring caravan within a residential curtilage was not applicable.

3.2.2. Other Technical Reports

None

4.0 Planning History

Application reg. no. P.3.2428 for a dwelling on the site was granted conditional planning permission on 21st September 1973.

5.0 Policy Context

5.1. Development Plan

Under the Clonmel Local Area Plan 2013 – 2019 (LAP), the site is shown as lying within an area that is zoned residential, wherein the objective is “To preserve and enhance existing residential amenity including avoiding excessive overlooking,

reduction in general safety and the reduction in the general usability and security of existing public and private open space.”

I have not been able to confirm that the LAP has been extended beyond 2019. I am however able to confirm that the Planning Authority has begun the process of making a new LAP for the period 2024 – 2030.

5.2. **Natural Heritage Designations**

Lower River Suir SAC (002137)

6.0 **The Referral**

6.1. **Referrer’s Case**

The referrer disagrees with the Planning Authority’s declaration that the following item is development that is not exempted development: Construction of a caravan parking bay complete with service connections including “mains water, mains electricity, mains sewage”.

The referrer draws attention to the following items that the Planning Authority discussed:

- Construction of a higher block wall to the sides and rear.
- Construction of a shed to the front of the dwelling.
- Expansion of the sewage network to a new caravan parking bay.

The referrer requests that the Board review the above.

6.2. **Planning Authority/Owner Occupier Response**

The Planning Authority requests that the Board confirm its declaration.

The following works are cited in the declaration:

- (a) Demolition of a boundary wall and its replacement with a higher boundary wall.
- (b) Replacement of two field gates with palisade gates.
- (c) Demolition of outbuildings and the construction of a new shed.

- (d) Repairs to the sewerage line within the property.
- (e) Internal works to the dwelling including the replacement of windows and doors, heating system, electrical upgrade, new kitchen, sanitary fittings and decoration.
- (f) Provision of a concrete plinth.
- (g) Other minor ancillary works.

An internal memo from Housing Engineering to Planning dated 20th October 2021 elucidates the costs of these works, which totalled €87,464.23 including VAT.

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000

Section 3(1): Development

In this Act, “development” means, except where the context otherwise requires, the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land.

Section 2(1): Interpretation

“use”, in relation to land, does not include the use of the land by the carrying out of any works thereon;

“works” includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure;

“land” includes any structure and any land covered with water (whether inland or coastal);

“structure” means any building, structure, excavation, or other thing constructed or made on, in or under any land, or any part of a structure so defined, and—

- (a) where the context so admits, includes the land on, in or under which the structure is situate,*

Section 4(1): Exempted development

The following shall be exempted developments for the purposes of this Act—

(aa) development by a local authority in its functional area;

Section 179: Local authority own development

(1) (a) The Minister may prescribe a development or a class of development for the purposes of this section where he or she is of the opinion that by reason of the likely size, nature or effect on the surroundings of such development or class of development there should, in relation to any such development or development belonging to such class of development, be compliance with the provisions of this section and regulations under this section.

(b) Where a local authority that is a planning authority proposes to carry out development, or development belonging to a class of development prescribed under paragraph (a) (hereafter in this section referred to as “proposed development”) it shall in relation to the proposed development comply with this section and any regulations under this section...

(6) This section shall not apply to proposed development which—

(a) consists of works of maintenance or repair other than works to a protected structure, or a proposed protected structure, which would materially affect the character of—

(i) the structure, or

(ii) any element of the structure which contributes to its special architectural, historical, archaeological, artistic, cultural, scientific, social or technical interest,

(b) is necessary for dealing urgently with any situation which the chief executive considers is an emergency situation calling for immediate action,

(bb) consists of works, other than works involving road widening, to enhance public bus services or improve facilities for cyclists provided under section 95 (as amended by section 37 of the Road Traffic Act 1994) of the Road Traffic Act 1961 or under section 38 of the Road Traffic Act 1994,

(c) consists of works which a local authority is required to undertake—

(i) by or under any enactment,

(ii) by or under the law of the European Union, or a provision of any act adopted by an institution of the European Union, or

(iii) by order of a court,

(d) is development in respect of which an environmental impact assessment report is required under section 175 or under any other enactment, or

(e) is development in respect of which an appropriate assessment is required under section 177AE, or under any other enactment.

7.2. Planning and Development Regulations, 2001

Article 6(1): Exempted development

Subject to article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1.

Article 80(1): Development prescribed for purposes of section 170 of Act

Subject to sub-article (2) and sub-section (6) of section 179 of the Act, the following classes of development, hereafter in this Part referred to as “proposed development”, are hereby prescribed for the purposes of section 179 of the Act —

(a) the construction or erection of a house,

(b) the construction of a new road or the widening or realignment of an existing road, where the length of the new road or of the widened or realigned portion of the existing road, as the case may be, would be—

(i) in the case of a road in an urban area, 100 metres or more, or

(ii) in the case of a road in any other area, 1 kilometre or more,

(c) the construction of a bridge or tunnel,

(d) the construction or erection of pumping stations, treatment works, holding tanks or outfall facilities for waste water or storm water,

(e) the construction or erection of water intake or treatment works, overground aqueducts, or dams or other installations designed to hold water or to store it on a long-term basis,

(f) drilling for water supplies,

(g) the construction of a swimming pool,

(h) the use of land, or the construction or erection of any installation or facility, for the disposal of waste, not being—

(i) development which comprises or is for the purposes of an activity in relation to which a waste licence is required or

(ii) development consisting of the provision of a bring facility which comprises not more than 5 receptacles,

(i) the use of land as a burial ground,

(j) the construction or erection of a fire station, a library or a public toilet, and

(k) any development other than those specified in paragraphs (a) to (j), the estimated cost of which exceeds €126,000, not being development consisting of the laying underground of sewers, mains, pipes or other apparatus.

Class 8 of Part 1 of Schedule 2 to Article 6

<p><i>The keeping or storing of a caravan, campervan or boat within the curtilage of a house.</i></p>	<p><i>1. Not more than one caravan, campervan or boat shall be so kept or stored.</i></p> <p><i>2. The caravan, campervan or boat shall not be used for the storage, display, advertisement or sale of goods or for the purposes of any business.</i></p> <p><i>3. No caravan, campervan or boat shall be so kept or stored for more than 9 months in any year or occupied as a dwelling while so kept or stored.</i></p>
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8.0 Assessment

8.1. Preliminary considerations

- 8.1.1. The applicant originally enquired about the concrete plinth to the rear of the bungalow on the site and its use, which was cited in enforcement enquiry TUD-19-038. The Planning Authority's assessment related to this plinth, which was one of a number of works undertaken by Tipperary County Council as landowner. Ultimately, this assessment related to two mobile homes that were on the site at the time the declaration was made. Thus, while the Planning Authority concluded that the plinth and the other works undertaken were development that was exempted development, the mobile homes were development that was not exempted development.
- 8.1.2. The applicant, as referrer, has widened the scope of his original enquiry to include some of the works undertaken. I, therefore, consider that it is appropriate to expand the question to include not just these, but all of the works undertaken, except the replacement of two field gates with palisade gates (denoted as item (b)), which has occurred outside the site edged red in the submitted OSi Place Map.
- 8.1.3. During my site visit, no mobile homes were on the site and so I will not include them within the question or assess them. (I assume that it was these mobile homes were the subject of the use cited in enforcement enquiry TUD-19-038). Indeed, at the time of my site visit, the concrete plinth was not the subject of any distinguishable use from that of a domestic hardstanding within the curtilage of the bungalow on the site.
- 8.1.4. Accordingly, I consider that the question should read as follows:

Whether the following items listed below, which have occurred at the residential property at Monvey, Northfields, Clonmel, Co. Tipperary, are development and, if so, whether they are exempted development:

- (a) Demolition of a boundary wall and its replacement with a higher boundary wall.
- (c) Demolition of outbuildings and the construction of a new shed.
- (d) Repairs to the sewerage line within the property.
- (e) Internal works to the dwelling including the replacement of windows and doors, heating system, electrical upgrade, new kitchen, sanitary fittings and decoration.

(f) Provision of a concrete plinth.

(g) Other minor ancillary works.

8.2. Is or is not development

8.2.1. Under Section 3(1) of the Planning and Development Act, 2000 (as amended) (herein after referred to as “the Act”), development is defined as including “the carrying out of any works on, in, over or under land”, where, under Section 2(1),

- “works” are defined as including “any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal”,
- “land” is defined as including any structure, and
- “structure” is defined as “any building, structure, excavation, or other thing constructed or made on, in or under any land, or any part of a structure so defined, and—(a) where the context so admits, includes the land on, in or under which the structure is situate,”

8.2.2. In the light of the foregoing definitions, the items listed in the question would entail acts or operations of construction, excavation, demolition, repair or renewal to either the buildings on the site or the site itself, i.e., the curtilage of the bungalow on the site. Accordingly, these items constitute development.

8.3. Is or is not exempted development

8.3.1. The Planning Authority states that the site is owned by the Local Authority, Tipperary County Council, and it was this Local Authority that undertook the development cited in the question.

8.3.2. Under Section 4(1) of the Act, development carried out by local authorities in their functional areas is exempted development, subject to the provisions of Section 179(1) as delimited by Section 179(6). The former Section empowers the Minister to make regulations to govern development that can be deemed to be exempted. The latter Section circumscribes the Ministers powers in this respect. Of relevance here is whether the development would need to be the subject of EIA or AA.

- In relation to EIA, the development would “not be of a class” that requires to be the subject of EIA, and,
- In relation to AA, the site is neither in nor beside a Natura 2000 site. Furthermore, this site is a fully serviced suburban site for a single dwelling house and the subject development entailed ancillary works to this dwelling house and its curtilage only. Accordingly, the need for AA did not arise.

8.3.3. Turning to the regulations made under Section 179(1), these are set out under Article 80(1) of the Planning and Development Regulations 2001 (as amended) (herein after referred to as “the Regulations”). Items (a) – (j) set out development types that are not applicable to the subject development. Item (j) places a cap of €126,000 on the cost of development that is exempted development. The Planning Authority advises that the subject development and the excluded item (b), replacement of two field gates with palisade gates, cost in total €87,464.23 including VAT, and so it falls below this cap. Accordingly, I conclude that the development is exempted development.

8.4. **Restrictions on exempted development**

8.4.1. Under Article 9 of the Regulations, restrictions on exemptions are set out. If any of these restrictions are applicable, then what would otherwise be exempted development is de-exempted. I have reviewed them, and I conclude that none are applicable to the subject development, which is exempted development.

9.0 **Recommendation**

9.1. I recommend that the Board should decide this referral in accordance with the following draft order.

9.2.

WHEREAS a question has arisen as to whether the following items listed below, which have occurred at the residential property at Monvey, Northfields, Clonmel, Co. Tipperary, are development and, if so, whether they are exempted development:

- (a) Demolition of a boundary wall and its replacement with a higher boundary wall.
- (c) Demolition of outbuildings and the construction of a new shed.
- (d) Repairs to the sewerage line within the property.
- (e) Internal works to the dwelling including the replacement of windows and doors, heating system, electrical upgrade, new kitchen, sanitary fittings and decoration.
- (f) Provision of a concrete plinth.
- (g) Other minor ancillary works:

AND WHEREAS Michael O'Donnell Jnr. requested a declaration on this question from Tipperary County Council and the Council issued a declaration on the 24th day of August, 2021, stating that the matter was development and was not exempted development:

AND WHEREAS Michael O'Donnell Jnr. referred this declaration for review to An Bord Pleanála on the 20th day of September, 2016:

AND WHEREAS An Bord Pleanála, in considering this referral, had regard particularly to –

- (a) Section 2(1) of the Planning and Development Act, 2000, as amended,
- (b) Section 3(1) of the Planning and Development Act, 2000,
- (c) Section 4(1)(aa) of the Planning and Development Act, 2000, as amended,
- (d) Section 179(1) & (6) of the Planning and Development Act, 2000, as amended,

(e) Articles 6(1), 9(1) & 80(1) of the Planning and Development Regulations, 2001, as amended, and

(f) the planning history of the site:

AND WHEREAS An Bord Pleanála has concluded that:

(a) The works undertaken by the Local Authority to the bungalow and in its curtilage are development.

(b) These works did not exceed the cost cap cited in Article 80(1)(k) of the Planning and Development Regulations, 2001 (as amended).

(c) Accordingly, they are exempted development.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5 (3) (a) of the 2000 Act, hereby decides that the following items:

(a) Demolition of a boundary wall and its replacement with a higher boundary wall.

(c) Demolition of outbuildings and the construction of a new shed.

(d) Repairs to the sewerage line within the property.

(e) Internal works to the dwelling including the replacement of windows and doors, heating system, electrical upgrade, new kitchen, sanitary fittings and decoration.

(f) Provision of a concrete plinth.

(g) Other minor ancillary works:

which have occurred at the residential property at Monvey, Northfields, Clonmel, Co. Tipperary are development and are exempted development.

Hugh D. Morrison
Planning Inspector

21st November 2022